

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHCO, INC.

v.

MATDAN AMERICA CORP.

CIVIL ACTION

NO. 98-5425

M E M O R A N D U M

Broderick, J.

December 8, 1998

Plaintiff Southco, Inc. ("Southco"), a Delaware corporation with a principal place of business in Pennsylvania, brings this action against Matdan America Corp. ("Matdan"), a New Jersey corporation with a principal place of business in Ohio, and Kanebridge Corp. ("Kanebridge"), a New Jersey corporation with offices in California, Georgia, Illinois, and New Jersey, alleging that Defendants have violated the Lanham Act, 15 U.S.C. §§ 1051-1127 and Copyright Laws, 17 U.S.C. §§ 501-505, 509 by selling "retractable captive screw fasteners" which are identified as being "equivalent" to those made by Southco and which use the same part numbers for the products as those used by Southco. Plaintiff has also brought state law claims for unfair competition, trademark infringement and trademark dilution. Plaintiff has now executed a settlement agreement with Kanebridge, dismissing it from this action without prejudice. Plaintiff's complaint and motion for an injunction seek to enjoin Matdan from marketing certain fasteners as "equivalent" to

Southco fasteners, from using Southco part numbers for its fasteners, and from using Southco's mark in connection with Matdan's products. Plaintiff also seeks an award of monetary damages, costs, and attorney's fees.

Presently before the Court is a motion brought by Matdan to dismiss Plaintiff's complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and improper venue pursuant to Fed. R. Civ. P. 12(b)(3). At the request of Plaintiff, this Court allowed the parties to conduct discovery on the jurisdictional issues raised by Matdan's motion. This discovery has now been completed. Plaintiff's response to Matdan's motion and Matdan's reply thereto are now before the Court.

For the reasons stated below, Matdan's motion to dismiss for lack of jurisdiction and improper venue will be denied.

## **I. Personal Jurisdiction**

A defendant's challenge to a court's personal jurisdiction imposes on the plaintiff the burden of coming forward with facts, by affidavit or otherwise, establishing with reasonable particularity sufficient contacts between the defendant and the forum state to support jurisdiction. Carteret Savings Bank v. Shushan, 954 F.2d 141, 146 (3d Cir. 1991); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984); Compagnie Des Bauxites de Guinea v. Insurance Company of N. America, et al., 651 F.2d 877, 880 (3d Cir. 1981). Any disputed

facts must be construed in favor of the Plaintiff. Carteret, 924 F.2d at 142, n.2. Unless the Court holds an evidentiary hearing, a plaintiff need only make a prima facie showing as to personal jurisdiction to defeat a motion to dismiss. Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

Absent a federal statute to the contrary, District Courts are authorized to exercise personal jurisdiction over non-resident corporations to the extent permissible under the law of the state in which the District Court is located. Fed. R. Civ. P. 4(e)(1). See Pennzoil Products Co. v. Colelli & Assoc., Inc., 149 F.3d 197,200 (3d Cir. 1998). The Pennsylvania long arm statute, 41 Pa. Cons. Stat. Ann. § 5322(b), allows a court to exercise jurisdiction over non-resident corporations "to the fullest extent permitted by the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the constitution of the United States." The reach of the Pennsylvania long arm statute is thus co-extensive with the due process clause of the federal Constitution. Pennzoil, 149 F.3d at 200; Vetrotex Certainteed Corporation v. Consolidated Fiber Glass Products Company, 75 F.3d 147, 150 (3d Cir. 1996); Dollar Savings Bank v. First Security Bank of Utah, N.A., 746 F.2d 208 (3d Cir. 1984); Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984). This Court's inquiry into personal jurisdiction is thus an inquiry into the constitutional propriety of the exercise of jurisdiction. Renner v. Lanard Toys Ltd., 33 F.3d 277,279 (3d

Cir. 1994); Max Daetwyler Corp. v. Meyer, 762 F.2d 290 (3d Cir. 1985).

"The due process limit to the exercise of personal jurisdiction [over an out-of-state defendant] is defined by a two-prong test." Vetrotex, 75 F.3d at 150. First, the defendant must have constitutionally sufficient "minimum contacts" with the forum. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985). The Court must examine "the relationship among the forum, the defendant and the litigation," Shaffer v. Heitner, 433 U.S. 186, 204 (1977), to "determine whether the defendant has 'purposefully directed' its activities toward residents of the forum." Vetrotex, 75 F.3d at 150 (quoting Burger King, 471 U.S. at 472). A defendant must take some act to "purposefully avail itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Hanson v. Deckla, 357 U.S. 235, 253 (1958). Second, once minimum contacts are shown, the Court may exercise jurisdiction when it determines, "in its discretion, that to do so would comport with 'traditional notions of fair play and substantial justice.'" Vetrotex, 75 F.3d at 150-51 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

In Asahi Metal Industry Co., Ltd. v. Superior Court of California, the United States Supreme Court held that mere awareness on the part of a foreign defendant that its product would reach the forum state in the stream of commerce did not constitute the minimum contacts necessary to establish personal

jurisdiction. 480 U.S. 102, 112 (1987). Justice O'Connor reasoned that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." Id. However, she continued, "[a]dditional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, ... or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." Id.

A Court's exercise of personal jurisdiction over a non-resident defendant may be either general or specific. Dollar Savings Bank, 746 F.2d at 211. "General jurisdiction may be invoked when the claim does not 'arise out of or is unrelated to the defendant's contact with the forum.'" Carteret Savings Bank, FA v. Shushan, 954 F.2d 141 (3d Cir. 1992) (citing Dollar Savings Bank, 746 F.2d at 211). To establish general jurisdiction the defendant must have had continuous and substantial contacts with the jurisdiction. Pennzoil, 149 F.3d at 200. Specific jurisdiction, by contrast, is "invoked when the claim is related to or arises out of the defendant's contacts with the forum." Dollar Savings Bank, 746 F.2d at 211. Under the "stream of commerce" theory, "specific jurisdiction is asserted over a nonresident defendant which injected its goods, albeit indirectly, into the forum state and either 'derived [a] substantial benefit from the forum state or had a reasonable

expectation' or deriving a substantial benefit from it." Pennzoil, 149 F.3d at 204 (citing Max Daetwyler, 762 F.2d at 300).

In Hershey Pasta Group v. Vitelli-Elvea Co., Inc., a case brought under the Lanham Act, the court found that the defendants, foreign pasta producers, had engaged in sufficient "additional conduct" to "indicate an intent or purpose to serve the market in the forum state." Hershey Pasta Group, 921 F.Supp. 1344, 1348 (M.D. Pa. 1996) (quoting Asahi, 480 U.S. at 112). The defendants had placed their products in a stream of commerce destined for the United States, knowing that Pennsylvania bakery licenses had been obtained, which the court found was evidence that the defendants knew their products were destined for Pennsylvania. Id. at 1349.

Likewise, in Felty v. Conaway Processing, the court held that a Dutch manufacturer of poultry processing equipment had sufficient contacts with Pennsylvania to support an assertion of personal jurisdiction. 738 F.Supp. 917, 920 (E.D. Pa. 1990). In that case, the court found that the Dutch manufacturer was aware that its equipment was being sold for use in Pennsylvania. In addition, a Danish corporation which acted as the manufacturer's worldwide distributor placed advertisements in trade publications circulating in Pennsylvania, and the manufacturer dealt directly with an American distributor to improve American sales. Id. 919-20. Given these facts, the court held that the manufacturer "should reasonably have expected to be haled into court in

Pennsylvania." Id. at 920.

In the instant matter, the Court has been provided with the depositions of the corporate designees of both Matdan and Kanebridge. Mr. David Arand is the founder and owner of Matdan. Robert James Williams is one of the owners of Kanebridge. The pleadings and jurisdictional discovery establish the following:

Matdan is a New Jersey corporation with its sole place of business in Ohio. The corporation was started by David Arand and Charles Handy in approximately 1992. Arand Deposition at 5-6. Mr. Handy is no longer an employee of Matdan, but still serves as a representative. Arand Deposition at 6. In the past, Mr. Handy also maintained a sales office for Matdan in North Carolina. Arand Deposition at 7.

Matdan's direct marketing consists primarily of sending literature to customers upon request, attending two trade shows in 1993, and sending a press release in early 1993 when the business first began operating. Arand Deposition at 7. Matdan does not employ an inside sales force to make calls to customers to solicit business. Arand Deposition at 10-11. Most of Matdan's sales are made to customers who learn of their products through various sources and call them to place orders. Arand Deposition at 9-10. Matdan is also listed in the Thomas Register, a phone book for the industry, under fasteners. Arand Deposition at 10.

Matdan sends literature to customers who request it. Arand Deposition at 20. Since 1993, Matdan has sent catalogs and brochures to at least nine customers in Pennsylvania who have contacted them for information. Arand Deposition at 35-36. Matdan's initial catalog, published in about 1994, states that it has an "extensive sales and distribution network throughout the United States." Arand Deposition at Exhibit 5.

Mr. Arand has made approximately ten to fifteen personal visits around the country to market Matdan products at the request of distributors. Arand Deposition at 18. None of these visits have been to Pennsylvania. Arand Deposition at 18. Mr. Arand's primary business contact with Pennsylvania, on behalf of Matdan, has been speaking with those distributors who purchased Matdan's products. Arand Deposition at 20. Mr. Arand, on behalf of Matdan, traveled to the Philadelphia area in late 1997 to purchase a piece of equipment used in making captive screws. Arand Deposition at 44-47.

Mr. Arand, acting on behalf of Matdan, has also placed calls to Plaintiff Southco on more than one occasion, using false names, in order to purchase captive screw fasteners from Plaintiff. Arand Deposition at 22-23. These purchases were made in order to review and analyze the Southco products to compare them to the Matdan product. Arand Deposition at 24-25. On at least one occasion this information was also used to copy or



attempt to copy the Southco product. Arand Deposition at 25-26. On another occasion, Matdan purchased 1,000 pieces from Southco in order to fill an order for a customer because Matdan, due to production problems, was unable to fill the order with its own products and the customer was unwilling to purchase the product from Southco at a higher price. Arand Deposition at 27-29. The customer involved in that order was a distributor in Pennsylvania who purchases parts from Matdan. Arand Deposition at 28.

Customers also learn about Matdan through distributors. Arand Deposition at 10. Matdan currently has four authorized distributors who sell its products throughout the United States and several foreign countries pursuant to written agreements. Arand Deposition at 11-12. Kanebridge Corporation, formerly a defendant in this case, has been Matdan's authorized "master" distributor in the United States since 1993. Arand Deposition at 12-13. Kanebridge's territory under the agreement is the entire United States, but Kanebridge, as a master distributor, sells only to distributors and not to end users of the product. Arand Deposition at 49-50, Williams Deposition at 5-6.

Kanebridge Corporation is a national master distributor of industrial thread fasteners throughout the United States. Williams Deposition at 5. Kanebridge does the vast majority of its business in domestic sales, including sales to customers in Pennsylvania and the Philadelphia area. Williams Deposition at

6. Matdan expects that Kanebridge, pursuant to this agreement, will make an effort to sell Matdan products in all of the states. Arand Deposition at 50.

Kanebridge places orders with Matdan, Matdan sends the orders to Kanebridge, and then Kanebridge delivers the materials to the customer. Matdan does not generally have any direct contact with Kanebridge customers. Arand Deposition at 21. Kanebridge closely guards its customer list, even from Matdan, so all sales are sent to Kanebridge's warehouse and distributed to customers from there. Arand Deposition at 53.

Matdan has customized its packaging to accommodate Kanebridge's needs. Arand Deposition at 51-53. Boxes were specially made for Kanebridge to fulfill its request for smaller quantities of the Matdan products. Arand Deposition at 52. Special labeling is also used only on Kanebridge orders. Arand Deposition at 52. These labels, at Kanebridge's request, contain no information that identifies Matdan. Arand Deposition at 54. This packaging is intended to protect Kanebridge's source so that Kanebridge's customers will not order products directly from Matdan. Arand Deposition at 54-55.

Pursuant to its agreement with Kanebridge, Matdan expects Kanebridge to sell its product, list the products in Kanebridge's catalog, and do other advertising of Matdan products in Kanebridge's discretion. Arand Deposition at 48-49. Kanebridge

offered to promote Matdan's product as part of its distributorship agreement and Matdan accepted that offer. Williams Deposition at 14.

Copies of pages of Matdan's catalog, or at least close reproductions thereof, are included in Kanebridge's Source Book. Arand Deposition at 39-40. Matdan also examined and approved the Kanebridge catalog after its material was included in it, including making comments on the presentation and technical corrections. Arand Deposition at 50. Final copies of the Kanebridge catalogs were also provided to Matdan. Williams Deposition at 26. Matdan has been listed in each of Kanebridge's catalogs since 1994. Williams Deposition at 13. Matdan fasteners are also listed in the Kanebridge Fastener Reference Guide. Williams Deposition at 19. Kanebridge has sent copies of its Source Book to approximately 280 customers in Pennsylvania. Williams Deposition at Exhibit 4. Approximately 74 customers in Pennsylvania have purchased copies of the Kanebridge Fastener Reference Guide. Williams Deposition at Exhibit 4.

Matdan's latest catalog, published in 1997, features artwork on its cover which was prepared by Kanebridge Corporation and used with permission. Arand Deposition at 38-39. This artwork is the same as artwork used by Kanebridge in its own advertising materials for Matdan products. Arand Deposition at 42 and Exhibit 10, Williams Deposition at 56 and Exhibit 8. Kanebridge

has an in-house department that puts together the artwork and text for catalogs and other promotional materials. Williams Deposition at 19. Kanebridge also hires outside companies to prepare some promotional materials. Williams Deposition at 19, 56.

Kanebridge promotes Matdan products through direct mailings to customers as well. Williams Deposition at 14. Direct mail pieces advertising Matdan products have been sent by Kanebridge to select customers on several occasions. Williams Deposition at 53-56, 66-67, 69. These materials were sent to approximately 40% of Kanebridge's customers based upon the level of their previous purchases from Kanebridge. Williams Deposition at 54.

Kanebridge also sent a fax to select customers in March 1997 encouraging customers to order Matdan products from Kanebridge as an equivalent to Southco 47 series panel fasteners. Williams Deposition at 60 and Exhibit 11. This same fax also encourages customers to order other Southco equivalents direct from Matdan and includes Matdan's phone and fax numbers. Williams Deposition at 60 and Exhibit 11. This fax was sent in response to a request by Matdan to "put out a broadcast fax to select customers regarding the panel fasteners." Williams Deposition at 60-61. Since Kanebridge does not sell the other products described on the fax, Matdan requested that Kanebridge include in the fax the information directing customers to order those products directly

from Matdan. Williams Deposition at 62-63.

Matdan has been substantially involved in influencing the content of the promotional materials used by Kanebridge regarding Matdan products. Any representations that Matdan's products are equivalent with Southco products which appear in Kanebridge's catalogs were included at the behest of Matdan. Williams Deposition at 48. Kanebridge advertised that Matdan's products "meet the same specifications as the Southco brand" based on representations made by Matdan. Williams Deposition at 67. Kanebridge's assurance that the panel fasteners made by Matdan were "high quality" was based on representations made by Matdan. Williams Deposition at 68. On a 1997 direct mail piece sent out by Kanebridge to select customers, Matdan expressly requested that Kanebridge include text describing other products made by Matdan which were not sold by Kanebridge. Williams Deposition at 69-70.

Matdan is not involved in deciding where the promotional materials are sent. Matdan has never directed Kanebridge to target Pennsylvania customers with its promotional materials. Williams Deposition at 77. Kanebridge has never provided Matdan with a list of its Pennsylvania customers. Williams Deposition at 77. Kanebridge has never obtained pre-approval from Matdan before shipping promotional materials to customers in Pennsylvania. Williams Deposition at 77.

Kanebridge now also maintains a web site where customers can obtain product information and place orders. Williams Deposition at 28-30. Currently, Kanebridge obtains less than 1% of its sales through its web site, but it has only become operational within the last year. Williams Deposition at 31.

Matdan also sells products to approximately forty other distributors who purchase Matdan products for re-sale to customers. Arand Deposition at 13. At least two of these distributors are located in Pennsylvania. Arand Deposition at 13-14. Matdan describes the business done through Kanebridge's sales efforts as a "not very big part" of their business because Kanebridge's efforts at distributing their product has only been "fair." Arand Deposition at 54.

Based upon the foregoing, the Court finds that Matdan has engaged in "additional conduct" with regard to its captive screw fasteners, beyond merely entering its product into the stream of commerce, which indicates an intent or purpose to serve the market in Pennsylvania. See Asahi, 480 U.S. at 111, 107 S. Ct. at 1031. Although Matdan has not specifically directed its distributor to target customers in Pennsylvania, Matdan employs a nationwide distributor, Kanebridge, for the purpose of selling its product. Matdan has also worked closely with that distributor regarding the content of promotional materials being distributed for its products. Matdan was aware that Kanebridge

has a national customer base. Matdan expected Kanebridge to sell its products to customers in every state, including Pennsylvania. Promotional materials for Matdan products were regularly sent by Kanebridge to a significant number of customers in Pennsylvania. Even though Matdan may not have been aware that these materials were being sent to customers in Pennsylvania, Matdan should have reasonably anticipated that this would be the case, particularly given the geographic vicinity of both Kanebridge and Matdan to Pennsylvania.

Matdan itself advertises in a trade publication, the Thomas Register, that has nationwide circulation. Matdan has sent promotional materials directly to customers in Pennsylvania. Matdan also sells its products directly to two distributors in Pennsylvania.

Under these facts, there can be no question that Matdan has purposefully availed itself of the economic benefits of conducting business within the Commonwealth, and that it has the requisite minimum contacts within the Commonwealth to warrant this court's exercise of personal jurisdiction over them. As the Supreme Court said in Asahi, "marketing the product through a distributor who has agreed to serve as the sales agent in the forum State" is "[a]dditional conduct of the defendant" which may "indicate an intent or purpose to serve the market in the forum State ...." 480 U.S. at 112. The mailing of the advertising

materials to customers in Pennsylvania, both directly and through Kanebridge, even without a resulting sale, is sufficient to establish jurisdiction where, as here, Plaintiff's claim of injury stems from the distribution of these materials which allegedly use its trademark, its part numbers, and make false equivalency claims. See Wetherhill Assoc., Inc. v. C.M.S. Enterprises, No. Civ. A. 97-1733, 1997 WL 688800 at \*2 (E.D. Pa. October 24, 1997) (Pollak, J.).

Next, the Court must consider whether the exercise of jurisdiction over Matdan would offend "traditional notions of fair play and substantial justice." Asahi, 480 U.S. at 113 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316). "[T]he determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief." Id. Moreover, "[w]hen minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the ... defendant." Id. at 114. Finally, the burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy. "The defendant 'must present a compelling case that the presence of some other considerations would render jurisdiction



unreasonable.' " Grand Entertainment Group Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 483 (3d Cir. 1993)(quoting Carteret Savings Bank, 954 F.2d at 150).

Applying these factors to Defendant Matdan the Court finds that exercising jurisdiction over this defendant comports with "traditional notions of fair play and substantial justice." Asahi, 480 U.S. at 113. Clearly, the Plaintiff, a corporation with its principal place of business in Pennsylvania, has an interest in obtaining relief in a convenient forum of its choice. Likewise, Pennsylvania has an interest in protecting its residents from the sort of conduct which Plaintiff alleges.

Most significantly, however, Defendant Matdan has failed to present a compelling argument that this Court's exercise of jurisdiction would place a more substantial burden on it than litigating this matter in another forum would place on the Plaintiff. The Court notes that the state of Ohio, where Matdan has its principal place of business, is adjacent to Pennsylvania. The situation here is a very different than that faced in Asahi and Max Daetwyler where the manufacturers were located in Taiwan and Hong Kong respectively. Matdan simply argues that it is a small company and that defending this lawsuit in Pennsylvania would be burdensome to it. Based upon the foregoing, the Court finds that Matdan has not brought forth compelling evidence of that would "'render jurisdiction unreasonable.' " Grand

Entertainment Group Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 483 (3d Cir. 1993)(quoting Carteret Savings Bank, 954 F.2d at 150).

The Court therefore concludes that Matdan has not met its burden of showing that defending itself in Pennsylvania would be so unreasonable as to deprive it of constitutional notions of fair play and substantial justice. Accordingly, because this Court may exercise personal jurisdiction over Matdan, the Court will deny Matdan's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2).

## **II. Venue**

Having denied Matdan's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2), the Court must now address the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(3) for improper venue. Since the Lanham Act does not contain a venue provision, venue with respect to those claims is determined according to the general venue provisions of 28 U.S.C. § 1391. See Library Publications, Inc. v. Heartland Samplers, Inc., 825 F. Supp. 701, 704 (E.D. Pa. 1993); Mida Manufacturing Co. v. Femic, Inc., 539 F. Supp. 159, 162 (E.D. Pa. 1982). Venue over Plaintiff's copyright claims is governed by 28 U.S.C. § 1400(a) which states, in relevant part: "Civil actions, suits, or proceedings arising under any Act of Congress relating to

copyrights ... may be instituted in the district in which the defendant or his agent resides or may be found." In this case, Plaintiff raises claims under both federal and state statutes. Under the general venue provisions of 28 U.S.C. § 1391, a civil action, such as this one, where "jurisdiction is not founded solely on diversity of citizenship" may be brought in (1) the "district where any defendant resides, if all defendants reside in the same state;" (2) a district in which "a substantial part of the events or omissions giving rise to the claim occurred;" or (3) a district where "any defendant may be found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b).

There is only one defendant currently before the Court so venue for Plaintiff's non-copyright claims is determined by 28 U.S.C. § 1391(b)(1). Thus, under both the specific venue provision governing copyright claims, 28 U.S.C. § 1400, and the general venue provision applicable to Plaintiff's other claims, 28 U.S.C. § 1391, venue is proper in any district where the defendant resides. Title 28 U.S.C. Chapter 87, the venue statute provides, in relevant part: "For purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c). This section, by its very terms, applied to

copyright claims under 28 U.S.C. § 1400 as well. Therefore, under both the general venue provision, 28 U.S.C. § 1391, and the venue provision governing copyright actions, 28 U.S.C. § 1400, venue is proper against Matdan, a corporation, in any district in which it is subject to personal jurisdiction.

This Court has heretofore found that it has personal jurisdiction over Matdan because Matdan has engaged in a course of conduct to sell, through its distributor Kanebridge Corporation, the screws which are alleged to have caused the injury to Plaintiff. Once this Court has established that Matdan was subject to personal jurisdiction in the Eastern District of Pennsylvania at the time the instant action was commenced, 28 U.S.C. § 1391(c) provides that Matdan is deemed to be a resident of the Eastern District of Pennsylvania for venue purposes. Venue over Plaintiff's copyright claims is therefore proper in the Eastern District of Pennsylvania under 28 U.S.C. § 1400 because Matdan is a resident of the Eastern District of Pennsylvania for venue purposes. Venue over Plaintiff's remaining claims is also proper in the Eastern District of Pennsylvania under 28 U.S.C. § 1391 (b)(1) because Matdan is the only defendant before this Court and Matdan is a resident of the Eastern District of Pennsylvania for venue purposes. Therefore, the Court will deny Matdan's motion to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHCO, INC.

CIVIL ACTION

v.

NO. 98-5425

MATDAN AMERICAN CORP.

ORDER

AND NOW, this 8th day of December, 1998; Defendant Matdan America Corp. having filed a motion to dismiss Plaintiff's complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) and improper venue pursuant to Fed. R. Civ. P. 12(b)(3); the Court having granted Plaintiff's request to conduct discovery on jurisdictional matters before responding to this motion; Plaintiff's response and Defendant's answer thereto now being before this Court; for the reasons stated in this Court's Memorandum of December 8, 1998;

**IT IS ORDERED** that Defendant's motion to dismiss Plaintiff's complaint for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2) is **DENIED**;

**IT IS FURTHER ORDERED** that Defendant's motion to dismiss

Plaintiff's complaint for improper venue pursuant to Fed. R. Civ.  
P. 12(b)(3) is **DENIED**.

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RAYMOND J. BRODERICK, J.